



Kerema v Government of Makueni County (Environment and Land Case 35 of 2019) [2025] KEELC 6184 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6184 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE 35 OF 2019
EO OBAGA, J
SEPTEMBER 25, 2025**

BETWEEN

DAVID TIRKUALE KEREMA PLAINTIFF

AND

GOVERNMENT OF MAKUENI COUNTY DEFENDANT

JUDGMENT

1. Vide the Complaint dated 24th May, 2019, the Plaintiff sought the following reliefs against the Defendant: -
 1. An order for nullification of the Enforcement Notice No. GMC/LMHPP/Emali/9/519/63.
 2. A permanent injunction restraining the Defendant, their agents, servants from removing or demolishing structures from plots No. 59 on leasehold Title No. Emali Town/27 and plot number 125 on Title No. Emali Township Block 1/217.
 3. Costs of the suit.
 4. Any other relief the court deems fit to grant.
2. One witness was called in support of the Plaintiff's claim. PW1, David Tirkuale Kerema adopted his statement dated 24th May, 2019 as his evidence in chief. He also produced the list and bundle of documents dated 24th May, 2019 as PEX 1 – 7 respectively.
3. The Plaintiff averred that he is the owner of plot number 59 in Emali which was later converted into Certificate of lease number Emali Town/27. He further averred that in the year 2014, the Defendant marked his building on Plot no. 59 for demolition alleging encroachment into a public road reserve. That the building was demolished on the rear side affecting the toilets and rooms which were being occupied as lodgings.



4. PW1 stated that after the said demolition, the Defendant placed beacons on the property and that in the year 2015, his ground floor building plans were approved by the Defendant to take an area of 65ft by 104ft. That his building plans were again renewed by the Defendant as required by law when he was ready to build the 1st floor of the building. He lamented that he was surprised at being issued with an enforcement notice in 2019 and his building being earmarked for demolition when concessions had earlier been made and approvals been issued by the Defendant for his building plans.
5. PW1 further testified that he purchased Plot No. 125 from Prestone Mathenge Nyumu who is the Administrator of the Estate of Paul Nyumu Kilung'ya. That the said Plot No. 125 was later converted into Certificate of lease number Emali Township Block 1/217 although the parcel of land has not been transferred to his name.
6. PW1 averred that his building on Parcel No. Emali Township Block 1/217 was marked for demolition by the Defendant in 2014 and that the County proceeded to demolish up to 20ft of the building's front area. That afterwards, the Defendant placed beacons on the land. He added that in May, 2019 the Defendant again marked the same building for demolition from both the front and the backside. That after he measured the distance from the next building, he realized that the size of the road reserve was 43ft which is more than the 40ft required for a road reserve.
7. PW1 stated that after the buildings on the suit properties were marked for demolition, he swiftly moved to court and that there had been no further action from the Defendant. He added both his lease certificates have not been recalled for rectification by the Defendant and that he has suffered great damage. He urged the court to issue a permanent injunction against the Defendant restraining them from demolishing the structures on the two parcels of land.
8. In the Defendant's Statement of Defence dated 9th September, 2019, the Defendant contended that the Plaintiff had no cause of action against it and urged the court to dismiss the suit with costs.
9. The Defence did not file witness statements or a bundle of documents in defence of the Plaintiff's claim. Again, there was no cross-examination of PW1.
10. In the Plaintiff's submissions dated 6th June, 2025, Counsel contended that the impugned Enforcement Notice No. GMC/LMHPP/Emali/9/519/63 of May 2019 was issued in the space of five years following the 2014 demolitions of the two suit properties. That the Plaintiff had presented building plans to the Defendant earlier in 2015 and the Defendant subsequently approved the same.
11. Counsel noted that the Defendant had issued the Plaintiff with occupation certificates for thirty-six units on Plot No. 59 Emali and that having fully complied, the Plaintiff would suffer double jeopardy on account of the Defendant's actions. Counsel argued that the Defendant should be estopped from enforcing the May 2019 Notice. It was submitted that equity demands reasonable expectations from a party and that administrative decisions should be fair. That the May 2019 Notice is harsh, unconscionable and oppressive and that the orders sought in the plaint should be granted.
12. The Defendant's submissions were not on the record at the time of writing this judgment.
13. From the evidence presented by the Plaintiff, the following facts are common ground: -
 - i. The Plaintiff is the registered lessee of land Parcel No. Emali Town/27 formerly known as Plot No. 59 Emali.
 - ii. The Plaintiff is the beneficial owner in possession of land Parcel No. Emali Township Block 1/217 formerly known as Plot No. 125 Emali.



- iii. The Plaintiff presented building plans for a proposed development project on Plot No. 59 Emali which were approved by the Director Urban Planning Housing Makueni County on 27th February, 2015.
 - iv. The Plaintiff was issued with a health certification for occupation of thirty-six units on Plot No. 59 Emali.
 - v. In May 2019, the Plaintiff was served with an Enforcement Notice No. GMC/LMHPP/Emali/9/519/63 pursuant to the provisions of the Physical Planning Act Cap 286 Laws of Kenya (now repealed).
14. At the core of these proceedings is the validity of the Enforcement Notice No. GMC/LMHPP/Emali/9/519/63 which the Plaintiff has alleged was issued maliciously and in contravention of the law. The Defendant's power to issue an enforcement notice was donated under Section 38 (1) and (2) of the Physical Planning Act Cap 286 Laws of Kenya (now repealed) which provided as follows: -
- (1) When it comes to the notice of a local authority that the development of land has been or is being carried out after the commencement of this Act without the required development permission having been obtained, or that any of the conditions of a development permission granted under this Act has not been complied with, the local authority may serve an enforcement notice on the owner, occupier or developer of the land.
 - (2) An enforcement notice shall specify the development alleged to have been carried out without development permission, or the conditions of the development permission alleged to have been contravened and such measures as may be required to be taken within the period specified in the notice to restore the land to its original condition before the development took place, or for securing compliance with those conditions, as the case may be, and in particular such enforcement notice may require the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities.'
15. Where a person is aggrieved with the issuance of an enforcement notice, the provisions of Section 38 (4), (5), (6) and (7) provides as follows: -
- (4) If a person on whom an enforcement notice has been served under subsection (1) is aggrieved by the notice he may within the period specified in the notice appeal to the relevant liaison committee under section 13.
 - (5) Any person who is aggrieved by a decision of the liaison committee may appeal against such decision to the National Liaison Committee under section 15.
 - (6) An appeal against a decision of the National Liaison Committee may be made to the High Court in accordance with the rules of procedure for the time being applicable to the High Court.
 - (7) Any development affecting any land to which an enforcement notice relates shall be discontinued and execution of the enforcement notice shall be stayed pending determination of an appeal made under subsection (4), (5) or (6).'
16. Section 39 (2) of the Physical Planning Act (now repealed) provides as follows:-



- (2) If such person has not lodged an appeal under section 38 he shall not be entitled to question the validity of any action taken by the local authority under subsection (1) upon any grounds, that could have been raised in such appeal.’
17. In his evidence in chief, the Plaintiff confirmed that he immediately moved to court after being served with the impugned enforcement notice and after his buildings were earmarked for demolition. The Defendant was clearly acting within the confines of the law when issuing the enforcement notice. The Act also clearly provided for a procedure for challenging the enforcement notice by the Plaintiff before moving to this court.
18. The Plaintiff ought to have challenged the Defendant’s enforcement notice at the County Liaison Committee as this court can only exercise appellate jurisdiction from the subsequent decision thereof.
19. In the case of *Safaripplies Limited v County Government of Bungoma & 3 others (Environment & Land Case E001 of 2024)* [2024] KEELC 3275, the Court noted as follows: -
- “On matters jurisdiction, it is trite law that a Court cannot act in a matter where it has no jurisdiction for jurisdiction is everything, and a premise upon which a Court or Tribunal derives the power, authority and legitimacy to entertain any matter before it. This proposition is supported by the pronouncements of the Court in the case of *Phoenix of E.A. Assurance Co. Limited vs. S. M. Thiga t/a Newspaper Service* [2019] eKLR where the Court stated thus: -“...’Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae.”
20. Similarly, in *Republic v Nairobi City County & another Ex parte Kenafic Properties Ltd & another* [2019] eKLR, the Court observed as follows: -
- “In *Republic v Attorney General & 7 others Ex-parte Konza Ranching and Farming Co-operative Society Limited* [2018] eKLR Mbogo J. cited the Court of Appeal in the case of *The Speaker of the National Assembly v Hon. James Njenga Karume* [2008] 1KLR 425 where it held that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. The court held that the Ex parte Applicant ought to have followed the clear procedure provided under the Physical Planning Act for the redress of his grievance against the Director of Physical Planning. This court is persuaded by the decisions cited above and agrees with the Respondent that the Ex parte Applicants ought to have pursued the procedure under Section 13 of the Physical Planning Act. No evidence was provided that the 1st and 2nd Ex parte Applicants attempted to lodge an appeal with the liaison committee and found that there was none.”
21. In *Immaculate Gicuku Mugo v Kiambu County Government* [2021] eKLR, Justice Eboso aptly held as follows: -
- “The only instance when this court may exercise its primary jurisdiction in disputes relating to enforcement notices is when a county does not have an operational liaison committee. Even if one were to contend that the impugned development pre-dated the PLUPA, the



forum where to raise that defence is the liaison committee. Our courts have umpteen times stated categorically that where Parliament has, through legislation, established primary dispute adjudication mechanisms and organs, the mechanisms must be exhausted. This was the principle spelt out in the Court of Appeal decision in Speaker of the National Assembly v James Njenga Karume [1992] eKLR. Not too long ago, the Court of Appeal emphasized this in Kibos Distillers Limited & 5 others v Benson Ambuti Adega & 2 others, a position that was affirmed by the Supreme Court in a subsequent petition.”

22. It is evident from the forgoing decisions and the provisions of Section 38 and 39 of the Physical Planning Act (now repealed) that the Plaintiff did not exhaust the appeal procedures in challenging the enforcement notice issued against the suit properties. For that reason, the validity of the said enforcement notice has been prematurely challenged in these proceedings.

23. Accordingly, the suit herein is incompetent and is dismissed with no orders as to costs.

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HON. E. O. OBAGA

JUDGE

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 25TH DAY OF SEPTEMBER, 2025.

IN THE PRESENCE OF:

Mr. Mariaria for Mr. Ombasa for Plaintiff.

Court assistant - Mueni

